408.

SUPREME COURT OF THE UNITED STATES.

No. 80.

GERARD C. BRANDON, PLAINTIFF IN ERROR,

vs.

RALPH W. LOFTUS AND FLOYD WHITEHEAD.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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J. & G. S. GIDEON, Printers.

LOFFTUS AND WHITEHEAD,
vs.
GERARD C. BRANDON,

Pleas before the honorable John McKinley, presiding judge of the circuit court of the United States, at a circuit court of the United States, in and for the ninth circuit and southern district of Mississippi, held at the town of Jackson, at the May term, in the year of our Lord one thousand eight hundred and forty-two:

Be it remembered that heretofore, to wit, on the 3d day of February, 1841, the following writ of summons ad respondendum issued out of the clerk's office of the court aforesaid, in the words and figures, to wit:

UNITED STATES OF AMERICA,
Southern district of Mississippi, } *Ss.*

The President of the United States, to the marshal of the southern district of Mississippi, greeting:

We command you without delay to summon Gerard C. Brandon, a citizen of the State of Mississippi, that he be and appear at the circuit court of the United States, to be held at the town of Jackson, in and for the southern district of Mississippi, on the first Monday of May next, to answer to Ralph W. Lofftus and Floyd Whitehead, citizens of the State of Virginia, and partners under the firm of Lofftus and Whitehead, of a plea of trespass on the case to their damage four thousand dollars; and that he do file his plea or defence with the clerk of said court on or before the meeting of the same, or judgment will be given against him by default. And have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 3d day of February,
[L. S.] A. D. 1841, and of the independence of the United States the sixty-fifth.

WM. BURNS, *Clerk*,
By GEO. W. MILLER, *D. C.*

Marshal's return—"Executed February 27th, 1841.
F. S. HUNT, *Marshal*,
By F. L. CLAIBORNE, *Deputy*."

And on the *the* said 3d day of February, in the year of our Lord one thousand eight hundred and forty-one, the plaintiffs aforesaid, by their attorneys Buckner, Barrow and Stewart, filed their declaration herein against the said defendant, in the words and figures following, to wit:

Souted States of America, } *Ss.*
Unithern district of Mississippi, }

Circuit court of the United States, May term, 1841.

Ralph W. Lofftus and Floyd Whitehead, co-partners in trade, &c., trading under the name, firm, and style of Lofftus & Whitehead, who are citizens of Virginia, complain of Gerard C. Brandon, who is a citizen of the State of Mississippi, in custody, &c., of a plea of trespass on the case on promises. For that, whereas William C. Collins and John C. Collins, who are citizens of the State of Louisiana, heretofore, to wit, on the twelfth day of December, in the year of our Lord one thousand eight hundred and thirty-eight, at to wit, at the district aforesaid, made their certain joint promissory note in writing, the date whereof is on the day and year aforesaid, and then and there delivered the said note to the said defendant, and thereby promised on the first day of January, one thousand eight hundred and forty-one, jointly and severally, to [pay to] said defendant, or order, two thousand six hundred and sixty-seven dollars, value received, payable at the Planter's Bank of the State of Mississippi, at Natchez, and the said defendant then and there duly endorsed and delivered the said note to the said plaintiffs.

And the said plaintiffs in fact say, that afterwards, when the said note became due and payable, to wit, on fourth day of January, in the year of our Lord one thousand eight hundred and forty-one, at the said Planter's Bank, to wit, at the district aforesaid, the said note was presented to and at said bank, and the payment of the said sum of money therein specified was then and there duly required according to the tenor and effect of the said note, but that neither the said bank nor the said William C. or John C. Collins, nor any person for or on their account, did or would at that or any other time, either before or since, pay the same, or any part thereof, to the said plaintiffs; of all which several premises the said defendant afterwards, to wit, on the day and year last aforesaid, at, to wit, at the district aforesaid, had notice, by means whereof the said defendant afterwards, to wit, on the said fourth day of January, 1841, at said district, in consideration thereof undertook and promised to pay said plaintiffs the said sum of money when he should be thereunto afterwards requested.

Yet the said defendant, altho' often requested, has not paid the said plaintiffs the said sum of money, or any part thereof; but to pay the same, or any part thereof, he, the said defendant, has hitherto wholly failed and refused, and still does fail and refuse, to the damage of the said plaintiffs four thousand dollars; and therefore they bring suit, &c. BUCKNER, BARROW & STEWART,

Plaintiffs' attorneys.

(Copy of note sued on.)

Fort Adams, *December* 12, 1838.

On the first day of January, A. D. 1841, we jointly and severally

promise to pay Gerard C. Brandon, or order, the sum of two thousand six hundred and sixty-seven dollars, value received, without plea or offset, payable and negotiable at the Planter's Bank of the State of Mississippi, at Natchez.

Signed, WILLIAM C. COLLINS,
JOHN C. COLLINS.

Endorsed—"Gerard C. Brandon," "Lofftus & Whitehead."

And the said defendant by attorney comes and defends the wrong and injury, when, &c., and says that he did not promise or assume in manner or form as the said plaintiffs have above thereof alledged against him; and of this he puts himself upon the country, &c.

QUITMAN & McMURRAN,
For defendant.

And the plaintiffs do the like.

BUCKNER, BARROW & STEWART,
For plaintiffs.

And afterwards, to wit, at the said May term of the court aforesaid, to wit, on the sixth day of June, in the year of our Lord one thousand eight hundred and forty-two, until which time this cause was legally continued, came the parties aforesaid, by their respective attorneys, and a jury being called, came, to wit, A. Stillman, J. Kittrell, H. Keating, Donald McNabb, George H. Ish, E. Newman, J. C. Miller, R. P. Winslow, Louis Reno, L. McManus, William Beresford, and C. Spears, who being empannelled, tried, and sworn to speak the truth upon the issue joined, do say, upon their oaths, that the said defendant did promise and assume in manner and form as the said plaintiffs have above thereof complained against him; and they assess the damages, by reason of the premises, to two thousand nine hundred and sixty-nine dollars and twenty-six cents.

Bill of exceptions tendered by the defendants.

Be it remembered that, on the trial of this cause, after the jury had been empannelled and sworn, and before they had retired from the bar, the plaintiffs produced and read in evidence the note sued on, and the endorsement thereon, in the words and figures following, to wit:

FORT ADAMS, *December 12th*, 1838.

On the first day of January, A. D. 1841, we jointly and severally promise to pay Gerard C. Brandon, or order, the sum of two thousand six hundred and sixty-seven dollars, value received, without plea or offset, payable and negotiable at the Planter's Bank of the State of Mississippi, at Natchez.

Signed, WILLIAM C. COLLINS,
JOHN C. COLLINS.

(Endorsed) "Gerard C. Brandon," "Lofftus & Whitehead."

The plaintiff then, without any further proof, offered to read to the jury, as evidence of the protest of said note, and to shew notice, a certificate of James K. Cook, which was contained in a loose detached piece of paper, partly written and partly printed, which certificate is in the words and figures following, to wit:

STATE OF MISSISSIPPI, *Adams county:*

I, James K. Cook, justice of the peace and ex-officio notary public in and for said county, residing in the city of Natchez, qualified according to law, do hereby certify that, on the 4th day of January, in the year 1841, I went to the Planters' Bank of the State of Mississippi, in Natchez, and then and there presented for payment the original note, of which the following is a true copy, together with the endorsements on the back of said note:

FORT ADAMS, *December 12th*, 1838.

On the first day of January, A. D. 1841, we jointly and severally promise to pay Gerard C. Brandon, or order, the sum of two thousand six hundred and sixty-seven dollars, value received, without plea or offset, payable and negotiable at the Planters' Bank of the State of Mississippi, at Natchez.

WILLIAM C. COLLINS,
JOHN C. COLLINS.

(Endorsed) "Gerard C. Brandon," "Lofftus & Whitehead."

And I then and there demanded payment of the said note according to its tenor and effect, and was answered by the teller of the said bank that the said note would not be paid, and that no funds were deposited in said bank for that purpose; and the said note was not paid by any person when payment thereof was demanded as aforesaid. Whereupon I protested said note for non-payment, and notified the parties thereto of said demand, non-payment, and protest, and that the holder of said note looked to them for payment thereof, which notices were given at the times, and addressed to, and directed in the manner following, to wit: To Gerard C. Brandon, at Fort Adams, Miss. To Gerard C. Brandon, at Pinckneyville, Miss. To Gerard C. Brandon, at Woodville, Miss. To W. C. and J. C. Collins, at Concordia, Louisiana.

All of which notices, directed to the parties respectively as aforesaid, were placed by me in the post office at Natchez in time to go out by the first mail of the day next succeeding that on which said note was protested as aforesaid.

Which facts constitute, as herein set forth, a full and true record of all that was done by me in the premises.

In testimony whereof I have hereunto set my hand and affixed [L. S.] my official seal this 27th day of January, 1841.

JAMES K. COOK, *J. P. Notary.*

STATE of MISSISSIPPI, *Adams county:*

Personally appeared before the undersigned justice of the peace

for the county aforesaid, James K. Cook, a justice of the peace and ex officio notary public, whose name is signed to the foregoing, and made oath that the same is a true statement, in substance and in fact, of his official acts and doings altogether in relation to the premises.

JAMES K. COOK.

Sworn to and subscribed before me, this 27th day of January, 1841.

M. ROBETAILLE, *J. P.*

To the admission of which as evidence to the jury the counsel of defendant objected, but the court overruled the objection, and permitted said certificate to go to the jury as evidence of its contents; to which decision of the court, in then and there admitting said certificate, and permitting it to be read in evidence, the counsel for the defendant excepted, and reserved his exception. He therefore prays that this his bill of exceptions may be signed, sealed, and made a part of the record; which is done accordingly.

J. McKINLEY, [SEAL.]

Therefore it is considered by the court, that the said plaintiffs recover against the said defendant the said sum of two thousand nine hundred and sixty-nine dollars and twenty-six cents, their damages aforesaid by the jurors in form aforesaid assessed, and also their costs and charges by them about their suit in this behalf expended.

And the said defendant in mercy, &c.

From which judgment the defendant prays a writ of error to the Supreme Court of the United States, which is granted.

UNITED STATES OF AMERICA, *Southern district of Mississippi*, } Circuit court U. S.

I, William H. Brown, clerk of said court, do hereby certify, that the foregoing seven pages, and what is contained on this page, contain a full, true, and complete transcript of the record of the judgment in the case therein named, as the same now remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Jackson, this 7th day of December, A. D. 1842.

[SEAL.]

W. H. BROWN, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

To Ralph W. Lofftus and Floyd Whitehead, or Messrs. Buckner, Barrow & Stewart, their attorneys, greeting.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth circuit and district of Mississippi, wherein Gerard C. Brandon is plaintiff and you are defendant in error, to shew cause, if any

there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Gholson, one of the judges of the circuit court of the United States for the district of Mis-
[SEAL.] sissippi, this 6th day of December, in the year of our Lord one thousand eight hundred and forty-two, and in the 67th year of the independence of the United States.

S. J. GHOLSON.

Rec'd, Dec'r 7, 1842. ANDERSON MILLER, *Marshal.*
By W. H. MILLER, *Deputy.*

Executed this citation on Messrs. Buckner, Barrow & Stewart personally, this 17th day of Dec'r, 1842.

ANDERSON MILLER, *Marshal.*
By W. H. MILLER, *Deputy.*

Marshal Miller's fees:

Mileage	-	$11 00
Service	-	2 00
		$13 00

Filed 20 Dec'r, 1843.